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COMMISSION DES DROITS DE LA PERSONNE DU NOUVEAU-BRUNSWICK

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Fredericton, N.B.
The Honourable Herménégilde Chiasson
Lieutenant Governor
Province of New Brunswick

Your Honour:

I have the honour to submit to you the Annual Report of the New Brunswick Human Rights Commission for the fiscal year ending March 31, 2004. The Commission is responsible to the Minister of Training and Employment Development, Province of New Brunswick.

I am, your Honour, your obedient servant,

Margaret-Ann Blaney
Minister of Training and Employment Development
Minister Responsible for the Human Rights Commission

Margaret-Ann Blaney
Minister of Training and Employment Development
Minister Responsible for the Human Rights Commission
Province of New Brunswick

Dear Minister:

It is with a combined sense of pleasure and pride that I submit to you the Annual Report of the New Brunswick Human Rights Commission, for the fiscal year ending March 31, 2004, for onward submission to Her Majesty's Representative, the Lieutenant-Governor of New Brunswick.

Yours very truly,

Patrick Malcolmson
Chairman

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Remarks from the Chairman

Dr. Patrick Malcolmson

The past year was an exceptionally busy one for the Human Rights Commission. In addition to the day to day work of handling complaints, the Commission spent a significant amount of time developing a new mission statement, a strategic plan, a communications plan and an education plan. All Commission members and staff were involved in this work.

The Commission also completed its two year comprehensive review of the *Human Rights Act*, and submitted its recommendations for amendments to the *Act* to the Minister in its *Position Paper on Human Rights Renewal in the Province of New Brunswick* (available on its Web site).

The work done by the Commission on the strategic plan translates into a clear focus and a clear set of objectives. The Commission has also undergone a transformation in the way it is administered, with greater accountability and a more effective work planning system.

On the complaint side of its responsibilities, the Commission embarked on a review of the process used to handle complaints. Its objective is to significantly reduce the time that it takes for a decision to be made on a complaint filed with the Commission. Some of the changes were implemented in 2003-04, but the review and change continues, with a commitment to use the best practices from other jurisdictions and an emphasis on mediation throughout the process.

The education plan focuses on two priorities: to inform employers and employer organizations of their duty to accommodate people with disabilities; and to explain the business case for human rights.

The Commission has also established a closer working relationship with the Office of the Ombudsman, the Official Languages Commissioner, the Premier's Advisory Councils, the Workplace Health, Safety and Compensation Commission, as well as the Department of Training and Employment Development. Finally, the Commission is represented by a strong board of appointed members.

New Brunswick was one of the first provinces in Canada to enact human rights legislation and to establish a Human Rights Commission. This legislation has served the province well. Periodic reforms to the human rights regime in New Brunswick have come about in response to the demands of the times and the need to keep pace with societal change.

A proposal for substantive changes to human rights legislation was made in 1989 in the report of the government appointed Commission into Reform of Human Rights, *Towards a World Family*[1]. Among the 150 recommendations was

[1] *Towards a World Family, A Report and Recommendations Respecting Human Rights in New Brunswick* (Ferris Report), Charles Ferris, (Fredericton, New Brunswick Human Rights Commission, 1989, 270 pp.) See Executive Summary and List of Recommendations at: http://www.gnb.ca/hrc-cdp/e/ferris2e.htm

the adoption of a New Brunswick Charter of Rights and Freedoms, changes to the governance structure of the Commission and the addition of prohibited grounds of discrimination. These recommendations received some government support, but only a few of the recommendations resulted in legislative reforms.

Since 1967, the human rights law in New Brunswick has been revised and added to in a number of important ways:

- The grounds of discrimination have been expanded to keep pace with the evolving public consensus on human rights principles and developments in the law of human rights; hence the addition of sex, marital status, age, physical disability, mental disability, sexual harassment and sexual orientation.

- The Commission was given carriage of complaints.

- The Labour and Employment Board was empowered to sit as a human rights Board of Inquiry.

The Human Rights Commission believes that we have again reached a point where a number of important changes to the *Human Rights Code* are in order. Developments in international law, the evolution of human rights law in Canada and a changed view on the part of New Brunswickers with respect to the need for new legal protections all stand to recommend these changes.

It is the view of the Commission, based upon two years of research and consultation with the public, government officials, other human rights agencies and organizations, and key stakeholder groups in the province, that we have again reached a point where the legislation requires reform.

The Commission's recommendations on amendments to the *Human Rights Act* include the addition of the following prohibited grounds of discrimination:

- Social condition;
- Political belief or activity;
- Family Status;
- Language.

The New Brunswick Human Rights Commission also recommends that it be as independent as the Office of the Ombudsman or the Language Commissioner, so as to avoid a possible perception of Ministerial influence. This would include a direct reporting relationship with the Legislature, with its budget set by a legislative committee. The members of the Commission would continue to be appointed by the Lieutenant-Governor in Council, on the recommendation of the legislative committee.

With respect to mandatory retirement, the Human Rights Commission recommends that the specific exception to age discrimination in relation to retirement plans and pension plans be removed from the *Act* as soon as is possible.

Other suggested amendments deal with bona fide occupational qualifications, and bona fide qualifications. Simply put, this would allow exemptions to the *Act* to be made in special cases, such as allowing housing for seniors, even though it could be argued that this is discrimination based on age.

This is my last year as Chair of the Commission. It has been an honour to serve as Chair for the last four years. In these years, the Commission has developed a better and more focused mission with a well developed strategic plan, a detailed business/work plan, and long range plans in the areas of education and communications. We also completed a comprehensive review of the *Human Rights Act* and made recommendations to government on amendments to the *Act*.

I leave knowing the Commission has accomplished a lot, but much remains to be done. I am confident that this work will continue, particularly in the area of human rights reform and carefully placing the Commission within the machinery of government. I am confident that the policy directions and options for reform have been well laid out, and that the future of the Commission will be in good hands.

Profiles of the Members of the Commission

(as of March 31, 2004)

Dr. Patrick N. Malcolmson
Chair

Patrick Malcolmson received his B.Ed. and MA from the University of Alberta. He pursued doctoral studies at the University of Toronto, where he was awarded an Ontario Graduate Scholarship, as well as a Social Sciences and Humanities Research Council of Canada Doctoral Fellowship. He obtained his PhD in Political Science in 1992.

Dr. Malcolmson worked in the Legislative Research Service of the Ontario legislature from 1985 to 1987, and taught Political Science at the University of Alberta from 1987 to 1990. He then joined the Faculty of St. Thomas University in Fredericton, where he is Associate Professor and Chair of the Department of Political Science. He has also served as Assistant Vice-President (Academic) and as Director of the Human Rights Programme. He is currently a member of the St. Thomas University Board of Governors.

Dr. Malcolmson is the author of scholarly articles and reviews on Canadian politics, legal and political theory, natural law and rights. He and Dr. Richard Myers are co-authors of the book *The Canadian Regime*. Dr. Malcolmson was appointed as the Chair of the New Brunswick Human Rights Commission in 2000.

Rose-Marie Curry

A native of Tracadie-Sheila, Rose-Marie Curry has worked for more than 29 years with special-needs children, as a methods and resource teacher, department head, and director of the L'Éveil learning centre.

She was instrumental in the development of various special education programs and above all in the integration of children with special needs in New Brunswick schools. She was a member of the special education institute and a founding member of La Fabrique sheltered workshop in Tracadie.

Ms. Curry is active in the Acadian Peninsula chapter of the Kidney Foundation of Canada. She is also the President of the Corporation du Développement des Deux Rivières de Tracadie Inc. (a non-profit group that promotes economic and tourist development in the Tracadie-Sheila region). She has been retired since June 2000. She was appointed to the Human Rights Commission in 2003.

Malcolm Harris

Malcolm A. Harris, B.B.A., of Saint John retired from the Workplace, Health, Safety and Compensation Commission in 2000 after nearly 25 years of service.

From 1992 to 2000, he was a Case Manager responsible for developing and implementing individual plans to allow injured workers to return to work. Prior to that, he was an Appeal's Officer, Implementation Officer / User Representative, Unit Supervisor and Claims Officer. From 1965 to 1969, he was an RCMP constable; in addition to his general police duties, he was a member of the RCMP "Musical Ride."

Mr. Harris is the Vice-Chairman of the Saint John Board of Police Commissioners and the Chairman of the Preservation Review Board of the City of Saint John. In addition, Mr. Harris counsels amputees on a volunteer basis and is an active member of St. Mark's Church in Saint John. He was appointed to the Human Rights Commission in 2002.

Jean-Claude Jalbert

Jean-Claude Jalbert, of Grand Falls, has worked in the desktop publishing, customer service, radio and newspaper fields, and has qualifications in customer relations and a number of computer applications.

He is the President of the New Brunswick Association for Community Living and a member of the executive of the Canadian Association for Community Living. He has also been a member of the Board of Directors of the Grand Falls Association for Community Living.

Mr. Jalbert was a member of the Board of Directors of the New Brunswick Premier's Council on the Status of Disabled Persons from 1998 to 2000. He represented Canada at the Inclusion International world conferences in 1998 and 2002. He was appointed to the Human Rights Commission in 2002.

André LeBlanc

André LeBlanc attended the Collège St. Joseph in Memramcook, N.B., the precursor of the Université de Moncton. He obtained a Certificate in Public Administration from the Université de Moncton. He has also undertaken professional development studies in Public Relations and Marketing at other teaching institutions, including the University of New Brunswick.

Mr. LeBlanc was employed in various capacities in the fisheries industry prior to commencing a lengthy and distinguished career with the New Brunswick Power Commission beginning in 1950. He occupied various positions throughout his career in the Customer Service Division, including supervisory positions. He played an instrumental role in the expansion of NB Power to the communities of Moncton and Grand Falls. He retired from NB Power in 1988.

Mr. LeBlanc has occupied a variety of positions on boards and associations, including being a Director of the Caisse Populaire and the Co-op in Cap-Pelé. He has also been actively involved in his community as a Director of the Beauséjour Curling Club and the Club d`âge d'or du Christ-Roi, both located in Moncton. He is also involved with the development of the Moncton Regional Council of the Federation of New Brunswick Senior Citizens.

He was first appointed to the Human Rights Commission in 1999 and was re-appointed in 2002.

Alanna Palmer

Alanna Palmer, B.B.A., B.Ed., of Fredericton, is the Director of ATHENE, the training division of the Institut de Memramcook Institute, with a staff of over 50 professionals province-wide and an annual revenue of $2 million. She has successfully negotiated privatisation, out-sourcing and contract training agreements, and is a certified consultant and trainer in the field of organisational change and transition management.

Ms. Palmer was awarded the 2001 National Volunteer of the Year award for her active involvement with a national registered charity for whom she has been Chair of the New Brunswick and Prince Edward Island region, and a director and Governance Committee Chair of the national board.

Ms. Palmer authored the Code of Conduct and Disciplinary Policy of a national sports organization and has been a consultant to the New Brunswick Advisory Council on the Status of Women. She is currently the Chair of the New Brunswick Foundation for the Arts. She was named to the Human Rights Commission in 2002.

David Peters CCdC

After a career that spanned the fields of education, hospitality and food service, David Peters retired in 2002 as supervisor of food services for the Saint John Regional Correctional Center. Mr. Peters has an international chef's degree, a teacher's license, as well as several other certificates. He is also a certified life skills coach.

Mr. Peters is the original co-designer, and was administrating supervisor, of all of the New Brunswick Community College Hospitality courses created in 1961 in Moncton and Saint John: Dining Room Services; Commercial Cooking; Hospitality Management; and Advanced Chefing, He was also directly affiliated with the St. Andrews campus courses.

Mr. Peters is an active member of the Black community of Saint John. He co-founded PROBE (Provincial Resources of Black Energies), PRUDE (Pride of Race, Unity, Dignity through Education), MALSK (Maritime Association of Life Skills Coaches) and the New Brunswick Chef's Association. He is a member of PRUDE and a former member of the National Association of Black Educators, the New Brunswick Minister's Advisory Committee on Immigration and Multiculturalism and several other groups. Mr. Peters, as Chef and proprietor of "Iron Duke Dining Rooms," was recommended in *Where To Eat In Canada* in 1978, one year after it opened.

Mr. Peters has delivered several lectures on Black history to school and university students, service clubs and civil servants, and was the host of a local television series on Black history and issues. He was recently included in the inaugural publication of *Who's Who in Black Canada* (national compiling started in June 2001). He was appointed to the Human Rights Commission in 2001.

Gordon Porter

Gordon Porter holds a B.A. and a B.Ed. from the University of New Brunswick, as well as a M.Ed. and C.A.S. from the University of Maine. He also pursued doctoral studies in special education administration at Syracuse University in New York. He received a Doctor of Civil Laws degree from the University of New Brunswick in recognition of his work with persons with disabilities.

Dr. Porter is an Assistant Professor of Education at the University of Maine at Presque Isle, where he teaches courses on inclusive education practices for students with special needs, including those with disabilities. He is an internationally known expert who has consulted, lectured and conducted training on inclusive education in numerous countries around the world. He was Director of Student Services for the schools in the Woodstock area from 1978 to 1999, after serving as a teacher and principal in several New Brunswick schools.

Dr. Porter was the founding Chairman of the Woodstock Community Residential Living Board and is a former president of the Canadian Association for Community Living at the local, provincial and national levels. He is the President of Inclusion InterAmericana, a regional federation of 20 national associations for individuals with disabilities and their families.

Dr. Porter was a Visiting Fellow at the New Zealand Institute in Mental Retardation and was a keynote speaker at the UNESCO World Conference on Special Education held in Salamanca, Spain in 1994. He co-edited the book *Changing Canadian Schools: Perspectives on Disability and Inclusion*, as well as many articles and chapters in books. He has acted as a consultant to the Inter-American Development Bank and was the author of a paper published in 2001 for the Bank, "Inclusive Education and Disability."

Dr. Porter is a recipient of the Queen's Golden Jubilee Medal. He was appointed to the Human Rights Commission in 2001.

Mary Jane Ward

Mary Jane Ward has earned numerous certificates in a wide variety of fields. She obtained a Business Administration Certificate in 1985 from the New Brunswick Community College, a B.Ed. degree from the University of New Brunswick in 1995, a Principal's Certificate in 2000 and a M.Ed. in 2001.

In 1986, Mrs. Ward became a Headstart Child Care Worker at Red Bank First Nations, where she lives, and she was the Headstart Co-ordinator there from 1987 to 1995. Since then, she has been the Principal and a Teacher of the Metepenagiag School in Red Bank First Nations.

She is a former member of the New Brunswick Micmac/Maliseet Child Care Council, the New Brunswick Early Childhood Coalition and the School Parent Advisory Committee of the North/ South Esk High School in Sunny Corner, N.B. Mrs. Ward is very much involved in extracurricular, religious and other community activities, especially those involving youth, parenting skills, drugs and alcohol, and Native culture. In 1995, she was chosen National Native Role Model for the Atlantic provinces by Health and Welfare Canada and Kahnawake Social Services.

Ms. Ward was first appointed to the Human Rights Commission in 1999, and she was re-appointed in 2003.

Overview

Comments

In the past year, the New Brunswick Human Rights Commission completed a strategic planning exercise, and began to review and make changes to the process it uses to deal with complaints.

In order to meets is vision of "being a leader in the promotion and protection of human rights and contributing to a fair and equitable, productive and inclusive environment in which to learn, work and live," the Commission focused on:

- providing a better service by improving the process used to handle complaints,
- setting clear priorities for its educational mandate, and
- enhancing its working relationship with other advocacy groups.

The two educational priorities identified are the duty to accommodate people with disabilities and the business case for human rights. Presentations will be made on these topics to various groups and organizations around the province over the coming months.

Throughout Canada, human rights commissions have large and growing caseloads. In New Brunswick, many of our complaints were more than a year old in 2003-04. Our objective is to streamline the process so that all complaints are dealt with appropriately and efficiently.

More resources have been assigned to the compliance function in order to clear out some of the older complaints. And the emphasis is now on the early screening of complaints and mediation. The process of handling complaints used by the other commissions is being considered, and their best practices will be adopted.

The Commission is also improving its relationship with other groups by sharing information and by holding joint seminars and information sessions.

Human Rights Act

Nature and scope

The *Human Rights Act* of New Brunswick, which is often cited as the *Human Rights Code*, is a provincial law that prohibits discrimination and harassment based on twelve personal characteristics in specified activities that fall under provincial jurisdiction. It is the principal legal instrument through which equality rights are enforced in New Brunswick.

The *Act* applies to public services, accommodations and facilities; the leasing of premises; the sale of property; labour unions and professional, business or trade associations; notices and signs; and all aspects of employment.

However, the *Human Rights Act* does not apply to federally regulated activities. Some examples are broadcasting, telecommunications, banking, railways, shipping, aeronautics, extra-provincial transportation, uranium, grains, First Nations governments and the federal government. Federally regulated activities are subject to the *Canadian Human Rights Act*, which is enforced by the Canadian Human Rights Commission.

The New Brunswick *Human Rights Act* prohibits discrimination by private sector businesses and organisations as well as by the provincial and municipal governments. Employers are responsible for the acts of their employees if such acts were committed in the course of employment, that is, if they were in some way related or associated with employment.

The courts have stated that it is not possible to avoid human rights laws through contracts or collective agreements, and that human rights laws prevail over any other law that conflicts with them unless it expressly says otherwise. However, human rights laws are subject to the Constitution, including the *Canadian Charter of Rights and Freedoms*.

No regulations have been issued pursuant to the *Human Rights Act*. However, the Human Rights Commission has adopted certain guidelines (see appendices for list of publications).

Protection Against Discrimination and Harassment

Not all discrimination or harassment is illegal. The *Human Rights Act* of New Brunswick currently protects against discrimination and harassment based on twelve grounds: age, marital status, religion, physical disability, mental disability, race, colour, ancestry, place of origin, national origin, sexual orientation and sex, including pregnancy. The *Act* also expressly prohibits sexual harassment in employment, housing and public services.

Discrimination can be defined in everyday terms as a practice or standard that is not reasonably necessary, that has the effect, intended or not, of putting certain persons or groups at a disadvantage because of shared personal characteristics such as race, sex or religion, and that is based on stereotypes about them or perpetuates the view that they are less capable or less worthy of recognition or value.

Canadian courts have recognised that discrimination may be direct, involving an intentional difference in treatment, usually motivated by bigotry, prejudice or stereotypes. However, it may also be unintentional, as in the case of "systemic" or "adverse effects" discrimination that occurs when a uniform practice has a disproportionately adverse effect on a disadvantaged group and the needs of the group are not reasonably accommodated.

Employers, service providers and others who are required not to discriminate must go beyond treating everyone the same without regard to race, sex and the other personal characteristics protected in human rights laws. They must, in addition, accommodate as much as reasonably possible the protected characteristics of those to whom such uniform treatment would have a discriminatory effect. This means that they must avoid standards that have a discriminatory effect where this can be done without sacrificing their own legitimate objectives or incurring undue hardship, whether that hardship takes the form of impossibility, serious risk or excessive cost.

Exceptions and Limits

The *Human Rights Act* includes a number of exceptions. For example, according to sub. 5(3), minors may be denied a service if this is due to an age of majority specified in a law. Also, section 13 provides that preferences or restrictions made pursuant to an affirmative action programme aimed at remedying a traditional situation of disadvantage are not discriminatory.

The *Human Rights Act* also has several exceptions concerning "bona fide qualifications" and "bona fide occupational qualifications." Recent Supreme Court of Canada decisions have established a three-part test to determine whether these exceptions apply. According to this test, a discriminatory standard adopted by an employer, landlord, owner or service provider is justified only when:

(1) the standard was adopted for a purpose or goal that is rationally connected to the function being performed,

(2) it was adopted in good faith and in the belief that it is necessary to fulfill that purpose or goal, and

(3) it is in fact be reasonably necessary to accomplish that purpose or goal, in the sense that the employer, landlord, owner or service provider cannot accommodate affected individuals without incurring undue hardship.

Like all laws, the *Human Rights Act* is subject to the *Canadian Charter of Rights and Freedoms*, which has been part of Canada's Constitution since 1982. Like the *Act*, the *Charter* protects equality rights. However, the *Charter* also guarantees certain fundamental freedoms, democratic rights, mobility rights, legal rights, aboriginal rights and linguistic rights. Furthermore, the *Charter* is enforced by the courts, not by any government agency. And, unlike the *Human Rights Act*, the *Charter* only applies to governments and their agents; private sector businesses and organisations are not subject to the *Charter*. The Commission interprets and applies the *Human Rights Act* in a manner consistent with the *Charter of Rights*.

Enforcement Process

The *Human Rights Act* is administered by the New Brunswick Human Rights Commission, which reports to the Minister of Training and Employment Development. The Commission investigates and conciliates formal complaints of discrimination filed under the *Act* and advances equality of opportunity through public education programmes and community development activities.

A person claiming to be aggrieved by discrimination contrary to the *Human Rights Act* may file a complaint on a special form available from the Commission. There is no cost associated with the complaint process, and it is illegal to retaliate against a person for filing a complaint. However, the incident in question must have occurred within the previous year, unless the Commission grants a time extension.

An employee of the Commission investigates the complaint and submits a report on the evidence to both parties. They can respond in writing if they consider that the report is incorrect or incomplete. The investigator's report and the responses of the parties are considered by the Commission at its next meeting.

The Commission has a gate-keeping function. It must determine at the first stage whether the complaint is within its jurisdiction and whether its officer should endeavour to effect a settlement of the complaint. It may also dismiss a complaint at this stage. If it does not dismiss it, the officer then attempts to conciliate the dispute.

If conciliation efforts ultimately fail to reach a settlement satisfactory to both parties, the Commission must determine whether the complaint should be heard before a public Board of Inquiry. It may also dismiss the complaint at this second stage.

When the Commission determines that a public Board of Inquiry should hear the matter, it forwards its recommendation to the Minister of Training and Employment Development, who appoints the Board. The Minister may refer the matter to the Labour and Employment Board, which is a permanent tribunal that deals with a variety of employment disputes, or to a human rights Board of Inquiry appointed to hear that specific case.

The Board hears the evidence and argument of both sides at a public hearing. If it finds that the *Act* was not violated, it dismisses the complaint. If it concludes that there was a violation, it may order, for example, that the discrimination stop, that a dismissed employee be rehired with back pay, that an apartment be offered to a person who had been denied an apartment or that the victim be compensated financially for expenses and emotional suffering. It is the Board of Inquiry, not the Commission, which holds a hearing and issues an order. Such boards are separate and independent from the Commission.

In order to more quickly reach a resolution, the Commission encourages early mediation and conciliation of complaints, in some cases, even at the "informal" stage, before a complaint form is drafted.

Educational Mandate

It is also the function of the Commission to forward the principle that every person is free and equal in dignity and rights. The preamble to the *Human Rights Code* reminds New Brunswickers that ignorance, forgetfulness, or contempt of the rights of others are often the cause of public miseries and social disadvantage and that people and institutions remain free only when freedom is founded upon respect for moral and spiritual values and the rule of law. Consequently, the Commission expends significant resources in the area of human rights education, both with respect to application of the *Code* and with respect to promotion of the rights protected under the *Canadian Charter of Rights and Freedoms* and under international human rights treaties binding on the Province.

The Commission also reports through government to international bodies responsible for the implementation of human rights treaties on its own efforts in the elimination of discrimination.

Compliance Branch

Complaint Process

Any individual who believes they have been discriminated against on the basis of race, colour, religion, national origin, ancestry, place of origin, age, physical disability, mental disability, marital status, sexual orientation or sex, has the right to file a complaint of discrimination under Section 17 of the New Brunswick *Human Rights Act*. All complaints filed with the Commission are considered confidential and are discussed only with the parties involved.

It should be noted that the Commission is sensitive to the fact that every complaint brought before it involves two parties, the Complainant and the Respondent. The Commission is committed to providing fair and impartial investigations to ensure equal treatment of all parties involved in a complaint.

Please see Appendix C for a flow chart of the complaint process.

Formal Complaints

A formal complaint is a complaint made in writing to the Commission on a complaint form, according to Section 17 of the *Human Rights Act*.

Please see Appendix D for a statistical table and charts showing more detailed information about the formal complaints received in 2003-2004. Here are some highlights:

- The Commission received 171 formal complaints this year, 59 of which alleged discrimination on two or more grounds (e.g. both sex discrimination and sexual harassment). When multiple grounds are factored in, these 171 complaints amounted to 282 allegations of discrimination.
- The most common grounds were physical disability (60), mental disability (47) and sex (31).
- As in previous years, most complaints were employment-related (72%).
- Of the 202 employment cases, 78 (39%) dealt with discrimination based on physical or mental disability. It was the largest group of complaints.
- One hundred and thirty six formal complaints were closed in 2003-04.
- Two hundred thirty formal complaint files were open at the end of the fiscal year, including cases referred to Boards of Inquiry.

The following is a sample of the types of formal complaints that the Commission dealt with during the period under review.

1. Mental Disability / Employment

An employee complained that he was harassed, and his employment of 10 years was terminated, because of his depression. He alleged that, while he was out on medical leave, he was harassed by his employer to provide a return to work date. As well, one of the managers sent him a harassing email that contained a variety of rejected Hallmark cards, such as: "I just want you to know that I'm sorry for what happened, especially since you survived." After two years, the employee returned to work on a graduated return to work program, but missed one and a half days for an emergency and one day due to illness. The employer terminated his employment, citing his inability to attend work on a regular basis as the reason.

The employer denied any discrimination, and the sender of the email message said that it was meant only as a joke, not as harassment.

Following an investigation and ongoing settlement attempts, the Commission determined that it was not prepared to dismiss this complaint. It instructed the Human Rights Officer to attempt to settle the complaint. Shortly afterwards, the officer was able to negotiate a settlement to the satisfaction of all parties. It consisted of a financial settlement for the employee's loss of employment, as well as a human rights training seminar by one of the Commission's staff.

2. Physical Disability / Employment

An employee complained that she was dismissed because she has a hypothyroid condition. She said that there were no problems with her work until after she informed her employer of her physical disability and requested to work fewer hours. After this, her employer claimed to have problems with her work performance, and offered her a demotion. When she did not respond, she was allegedly dismissed.

The employer denied having dismissed the employee, and stated that her disability had nothing to do with the decision to demote her. It was due to her work performance.

Thanks to the cooperation of both sides, the Commission was able to negotiate a settlement satisfactory to all within six weeks after receiving the signed complaint form. The settlement included financial compensation for the loss of employment, a letter of reference and a human rights training seminar by the Commission.

3. Mental Disability and Physical Disability / Employment

The complainant alleged that his employer had discriminated against him because of his mental disability, stress, and his physical disability, diabetes. His physician had put him off work initially for three months, then for an additional two months and finally for another two months. The employer then terminated his full-time employment and offered him a term contract.

The employer denied any discrimination. It argued that it had not been adequately informed of the employee's medical condition, but admitted that it did not contact him either. It also argued that his sick benefits had expired, and that it was not obligated to pay him when he was not at work.

The Commission decided not to dismiss the complaint. When conciliation attempts were unsuccessful, a human rights board of inquiry was appointed. However, the Legal Counsel was able to settle the complaint before the hearing. The employee was compensated for his loss of employment.

Referrals

The staff at the Human Rights Commission continue, as part of its service to all those who contact us, to refer those callers on to the most appropriate agency if their query does not fall within the jurisdiction of the *Human Rights Act*. There were 675 referrals in 2003-04. The types of referrals remain the same –Office of the Ombudsman, Employment Standards, the Canadian Human Rights Commission and various other agencies or government departments that may better serve the caller.

Boards of Inquiry

If a formal complaint cannot be settled, the Commission may recommend that a tribunal hear the complaint. In that case, the Minister of Training and Employment Development may refer the matter to the Labour and Employment Board, which is a permanent tribunal that deals with a variety of employment disputes, or to a human rights Board of Inquiry appointed to hear that specific case. Such boards are separate and independent from the Commission.

Six Boards of Inquiry were pending at the beginning of the 2003-2004 fiscal year. Two were settled prior to the Board's appointment or the conclusion of the hearing, decisions were rendered in another two complaints and at the end of the fiscal year decisions were still pending with respect to the other two.

Seven new cases were referred to a Board during the past fiscal year. Two were settled, the hearing has concluded with respect to a third and the four others will be heard in 2004-05. Thus, seven Boards of Inquiry were pending on March 31, 2004.

In addition, during 2003-04, the Commission asked the Court to review two Board of Inquiry decisions, and parties challenged Commission decisions in two other cases. Three of the cases are pending; the Commission was successful in the fourth judicial review.

This represents a more than twofold increase in the level of Board and court activity compared to recent years. This is a result of several factors: 1) the increase in the number of formal complaints, which had doubled in the previous fiscal year; 2) recent case-law clarifying the threshold and standard of review applicable at the Commission level in determining which complaints merit a formal hearing; and 3) the Commission's own desire to expedite complaints and bring about timely Board referrals in meritorious cases.

The two Boards of Inquiry for which decisions were given in 2003-04 were the *Daigle* and *Price* cases.

In *Daigle v. Griffins Pub*, the Board recognized the long line of cases that state that physical disability discrimination extends to cases where non-disabled individuals suffer because their employers perceive them to be disabled. Nevertheless, it held that Ms. Daigle could be terminated as long as the ailment perceived was a "normal ailment", such as stomach cramps, and not a physical disability within the meaning of the Code.

In *Price v. The City of Fredericton*, the Board held that an employer could rely on the advice of the Workplace Health, Safety and Compensation Commission in determining its employee's fitness for duty. It was not required to obtain an individual assessment by an independent board of doctors.

The Commission is seeking judicial review of both these decisions. During 2003-04, the Commission also dealt with three other Board of Inquiry hearings, *Sahyoun*, *AA, BB and CC* and *Manuel*.

In *Sahyoun v. ACAA, CCAA and UNBSJ*, the Commission argued against a policy of the Canadian Colleges Athletic Association that restricts the number of non-Canadian students who can play on college athletic teams. Mr. Sahyoun was a student at UNBSJ who, despite his demonstrated abilities as a soccer player, was refused a spot on varsity soccer team because of the non-Canadian rule. UNBSJ agreed that the rule was discriminatory, but the sport governing conferences maintain that it is not. Hearings closed in February, 2004.

In *A.A., B.B. and C.C. v. Department of Family and Community Services and the Department of Health and Wellness*, the complainants challenged provisions of the *Vital Statistics Act* and the *Family Services Act* that prevent a same-sex spouse from adopting the child of the other spouse or to register the child at birth in the non-biological parent's name. The Province did not oppose the complaint on its merits, but objected to the Board's jurisdiction. Hearings closed in May 2004.

Finally, in *Manuel v. Province of New Brunswick*, a Board of Inquiry was appointed to hear a complaint of discrimination brought by the parents of an autistic child who has been refused Applied Behavioural Analysis therapy to treat his disorder, based on government policies in place.

Education and Development Branch

The Education and Development Branch is comprised of three officers who report to the Director of the Human Rights Commission.

In 2003-04, the Human Rights Commission adopted an education plan that identified two key objectives: 1) establish the link between human rights and prosperity (the business case for human rights) and 2) explain the duty to accommodate in relation to disability.

Workshops and supporting materials were developed on both topics and were presented to a variety of audiences.

In addition, the Education Branch engaged in the following activities:

National and International Activities

The Human Rights Commission is an active member of the Canadian Association of Statutory Human Rights Agencies (CASHRA), which fosters cooperation between human rights agencies across Canada. An officer from the Education Branch represents the Commission on CASHRA's Public Education Partners (PEP) committee, which meets by phone on a monthly basis. One of PEP's goals is to share useful information and ideas and to identify opportunities for cooperation between human rights commissions in Canada with respect to human rights education. PEP maintains an inventory of human rights education activities in Canada and it was updated this year.

The Human Rights Commission is also a member of the Association francophone des commissions nationales des droits de l'homme, which is an international network of francophone human rights commissions. The organization was established in 2002 to foster cooperation between governmental and non-governmental agencies that promote human rights in French-speaking countries.

The Commission has continued its participation in an inter-departmental group of officials involved in the preparation of progress reports required to be submitted to the United Nations under several international human rights treaties. The committee also reviewed new instruments submitted for ratification.

On June 23, the Human Rights Commission participated in a consultation session on the National Plan of Action for Children. The plan is based on the United Nations Convention on the Rights of the Child.

Breaking Down the Barriers conference

In partnership with the Workplace Health, Safety and Compensation Commission (WHSCC), the Human Rights Commission organised a conference focused on the elimination of various barriers that prevent injured workers from return-

ing to work. The other partners were the New Brunswick Medical Society and the New Brunswick Branch of the Canadian Bar Association.

The conference largely focused on the employer's duty to accommodate disabled workers under the *Human Rights Act*, the physician's role in facilitating the return to work and the WHSCC's disability management process. The keynote speech was given by Dr. Fred McGinn, the Founding Coordinator of Dalhousie University's Diploma Program in Disability Management (DDM).

One of the panels provided feedback on the Commission's draft *Guideline on Accommodating Physical and Mental Disability at Work*.

The conference, which was held on April 5, 2003 in Fredericton, was attended by employers, labour representatives, health professionals and lawyers. A follow-up conference was planned.

Human Rights Award

The New Brunswick Human Rights Award was established in 1988 to recognize outstanding effort, achievement or leadership in enhancing human rights in New Brunswick.

The 2003 Human Rights Award was presented to Eugène LeBlanc of Memramcook on September 14, 2003, by Lieutenant Governor Marilyn Trenholme Counsell at a ceremony held at Old Government House in Fredericton.

For many years, Eugène LeBlanc devoted himself to creating social and vocational opportunities for New Brunswickers who have a mental illness.

Despite his own challenges, he steadfastly leads a client run activity centre in Moncton called Groupe de support émotionnel Inc. He is also the Publisher and Editor of Our Voice / Notre Voix, a respected publication with an international circulation that promotes the viewpoints of those having psychiatric content in their lives.

Mr. LeBlanc has worked hard to enhance awareness of mental health / illness issues and of the need to respect the rights of those who experience mental disabilities. Through his efforts, he succeeded in transforming and improving the lives of many New Brunswickers.

Publications

In October 2003, the Commission adopted a guideline on drug and alcohol testing in the workplace. A number of other guidelines are under development.

In July 2003, the Commission adopted a revised vision and mission statement with key result areas and strategic goals. It is reproduced in Appendix A of this report.

The Commission also published a summary of the public consultations held in 2002 and 2003 on new directions for human rights in New Brunswick.

In February 2004, it also published recommendations for amending the Human Rights Act in its *Position Paper on Human Rights Renewal in the Province of New Brunswick*. More information about the Commission's recommendations may be found in the Remarks from the Chairman.

Printed copies of the above publications may be obtained from the Commission. They are also available from the Commission's website.

Please see Appendix F for a complete list of the Commission's publications.

Website

The Human Rights Commission's website (located at www.gnb.ca/hrc-cdp) is a key component of its educational programme.

The site was designed to permit speedy access and to allow search engines to find its entire contents. Advanced features and extensive graphics were avoided. In addition, a text-only alternative to the home page is provided for visually impaired persons who rely on computerized readers. To facilitate navigation, links are clearly labelled, and a site map, "What's New" page and search form.

The website includes the Commission's recent annual reports, all of its guidelines, as well as several pages of additional information. It also includes links to the Commission's news releases and to the full text of the *Human Rights Act*.

Media Relations

Media relations is one of the components of the Commission's communications strategy.

The Chairman of the Commission and members of the staff gave media interviews for radio and television on several topics.

Statements, news releases or op-ed pieces were published on:

- International Day for the Elimination of Racial Discrimination;
- New Brunswick Human Rights Day;
- International Women's Day;
- the International Day of Disabled Persons;
- inviting nominations for the Human Rights Award;

- announcing the recipient of the Human Rights Award;
- the publication of the annual report;
- the Commission's toll-free number;
- same-sex marriage;
- racial cleansing signs at UNB;
- the roles of Parliament and the courts in human rights.

Workshops and Seminars

Fifty-eight workshops or information sessions were conducted by staff.

Clients included labour organizations, universities, high schools, private schools, teachers, guidance counsellors, community colleges, youth programmes, employers, human resources professionals, government departments and agencies, professional associations, and social and community organizations.

Examples of some of the topics of the workshops:

- Duty to Accommodate;
- Business Case for Human Rights;
- Human Rights at Work:
- What Teachers Should Know About Human Rights;
- Harassment in the Workplace;
- Bullying in the Workplace;
- Complaint Process;
- Cool Schools;
- Mandatory Retirement.

Employer Relations

Several workshops and training sessions were conducted for management and staff. Some of them were agreed to as terms of complaint settlements.

Assistance was provided to employers with respect to policy development, training and various human rights issues in employment. These are a few examples of the issues where advice or assistance was provided:

- employment application forms and job ads;
- the duty to accommodate;
- employment equity programmes;
- bona fide occupational qualifications;

- mandatory retirement;
- work on the Sabbath.

Cooperation

- Delivery of some of the workshops and classes of the annual Human Rights Summer Institute organized by the Atlantic Human Rights Centre;
- The Executive Council's Committee on Revamping Women, Seniors and Child Abuse Protocols;
- City of Moncton's Public Safety Advisory Committee;
- ad hoc advisory group on the establishment of the New Brunswick Seniors' Council;
- The Federation of Canadian Municipalities' Standing Committee on Race Relations;
- Greater Saint John project of the Cross Canada Civic Initiatives (CCCI) on Building Inclusive Communities;
- The Committee on Sexual Misconduct of the Anglican Diocese of Fredericton;
- The Ramps New Brunswick Visible Minority Policing Committee.

Community Relations

Members and staff of the Commission participated in a number of community activities that fostered networking, cooperation, information-sharing and visibility in the human rights community:

- Annual Disability Awareness Legislative Breakfast;
- Annual meeting of the New Brunswick Federation of Labour;
- Annual meeting of the New Brunswick Association of Nursing Homes;
- Video presentation of the Hospital Liaison Committee for Jehovah's Witnesses, on human rights issues related to blood transfusion;
- Annual Vigod human rights lecture;
- AIDS Awareness breakfast;
- Holocaust Memorial;
- Asian Heritage Month celebrations in Fredericton;
- Annual Dr. Abdul Q. Lodhi Lecture on Human Rights;
- Annual Muriel McQueen Fergusson Foundation Award reception in Fredericton;
- Open house of the Workplace Health, Safety and Compensation Commission;
- Gay Pride Flag Raising at Moncton City Hall on June 19.

Appendix A
Overview of Strategic Plan 2003-06

VISION

To be a leader in the promotion and protection of human rights and contribute to a fair, equitable, productive and inclusive environment in which to learn, work and live.

MISSION

The New Brunswick Human Rights Commission was created in 1967 to administer the Human Rights Act

The Commission promotes the principles of equality and seeks to eliminate discriminatory practices by enforcing the *act* and educating about human rights and responsibilities.

To accomplish our vision/ mission we will direct our efforts to:

Key Result Areas

In achieving our purpose we will move towards these goals:

Strategic Goals

Mandate

1. Enhance the role of the Human Rights Commission and its place in the Province of NB
2. Maintain productive, positive partnerships with other key stakeholders
3. Implement effective public relations and communications strategy
4. Articulate the contribution that human rights makes to the pursuit of prosperity and equality in New Brunswick (represent the unheard voices)

Service Delivery

1. Ensure the compliance process results in a timely and fair resolution of human rights complaints
2. Implement an education plan to enhance public knowledge of human rights

Staying Current

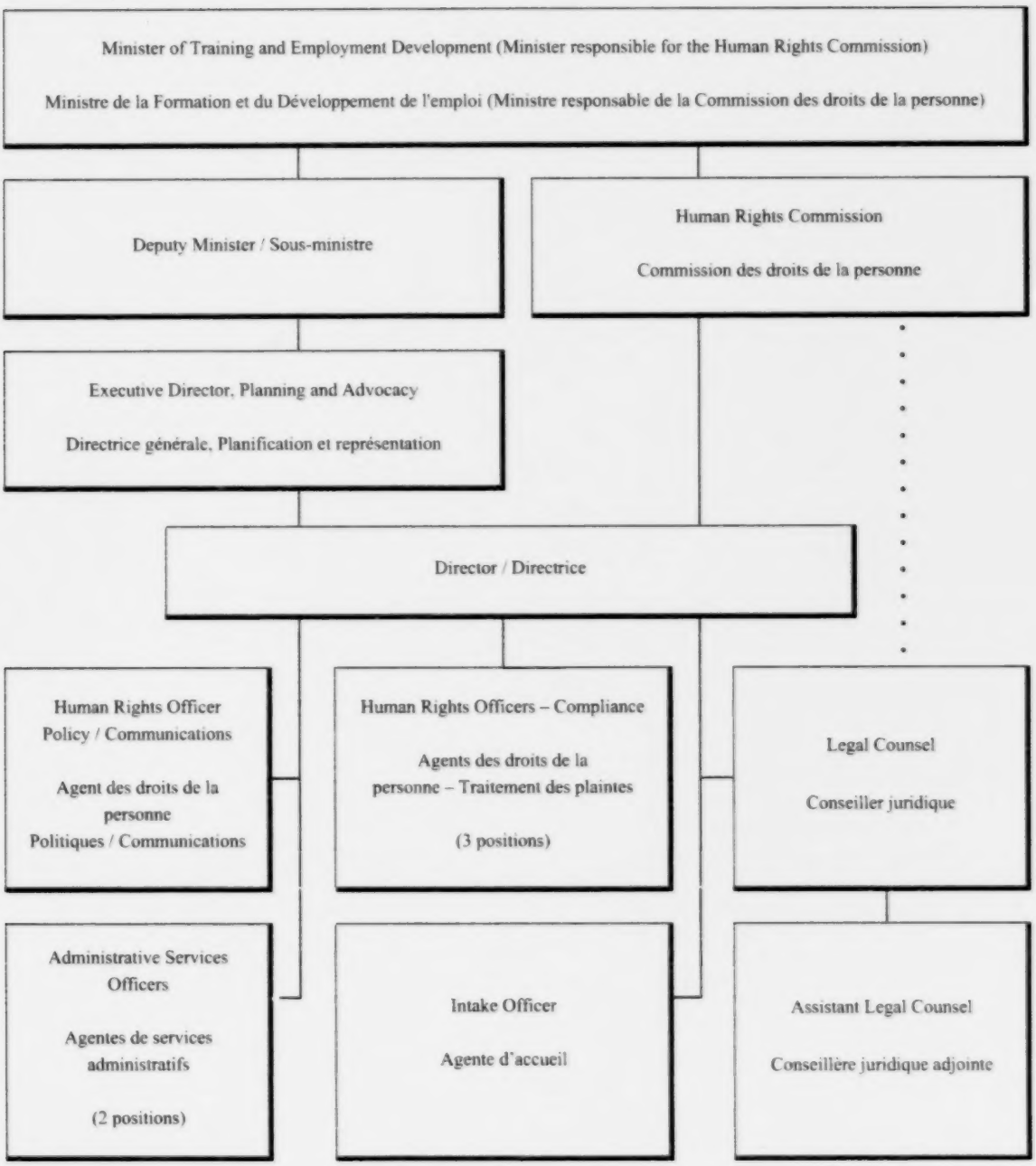
1. Advise government on appropriate revisions to the Human Rights Act
2. Develop a knowledge base for policy development on evolving critical issues
3. Secure the appropriate technology & skills required for the Human Rights Commission to fulfill its legislative mandate

Continuous Planning & Prioritizing

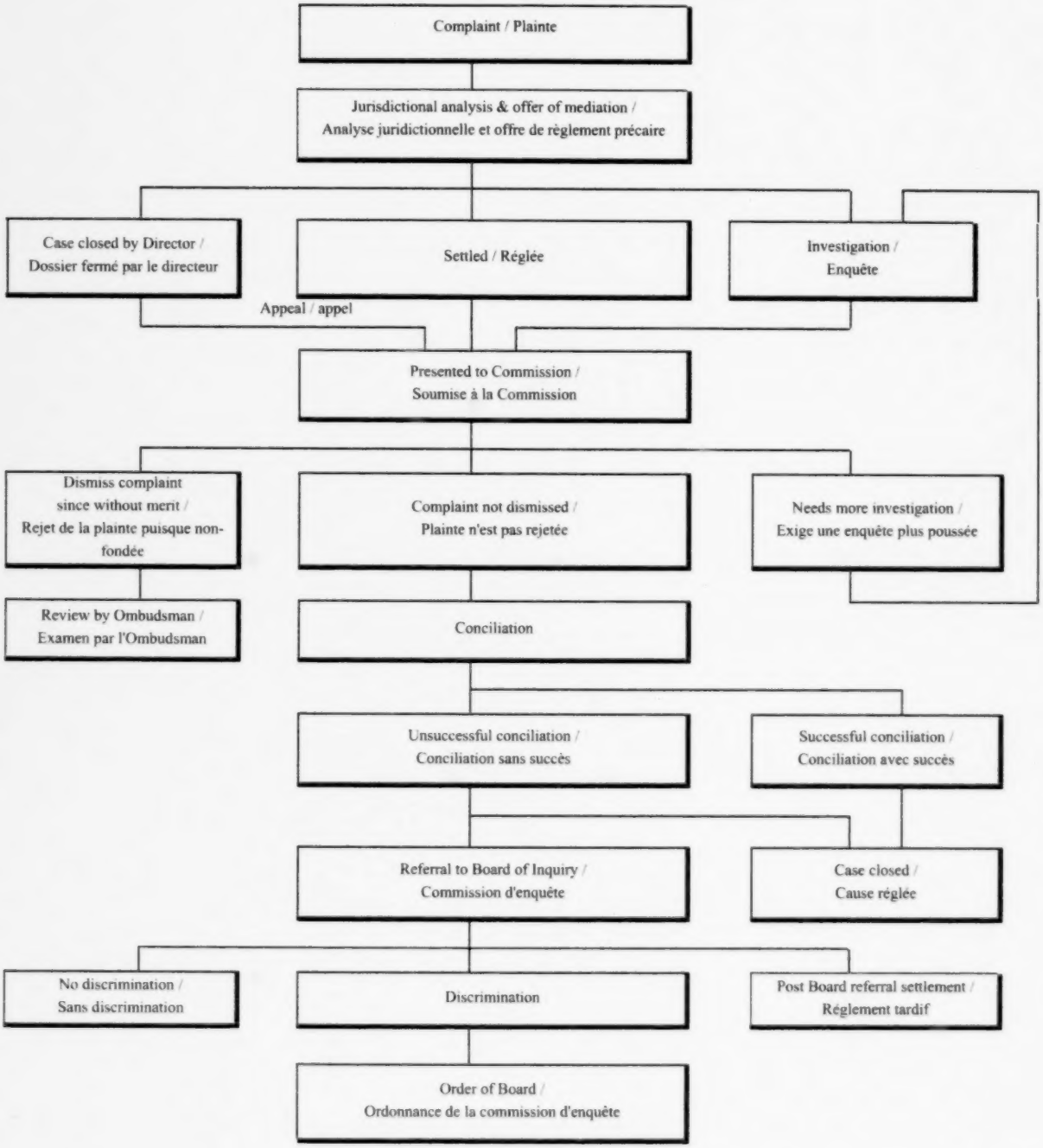
1. Continue to assess our progress and determine future actions
2. Utilize case data for planning purposes

Appendix B
Organisational Chart

March 31, 2004



Appendix C
Complaint Process



Appendix D

Formal Complaints Received by Ground and Activity[1]

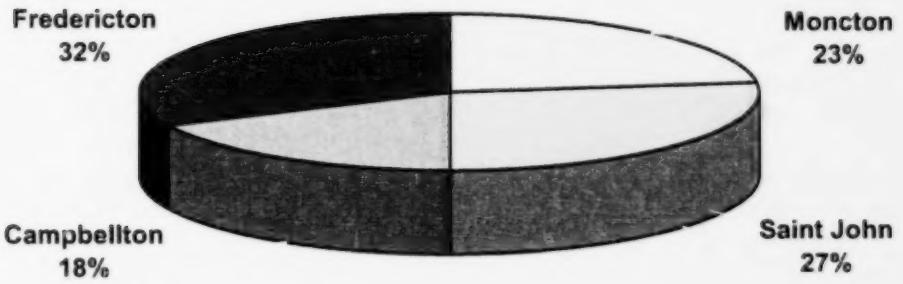
April 1, 2003 to March 31, 2004

	Employment Emploi	Housing Logement	Services Services	Publicity Publicité	Associations Adhésions	Total	
Race / Race	11	3	5	0	0	**19**	(7%)
Sex / Sexe	24	1	4	2	0	**31**	(11%
Religion / Croyance	1	1	1	1	0	**4**	(1%)
Place of Origin / Lieu d'origine	6	2	2	0	1	**11**	(4%)
Marital Status / État matrimonial	8	1	4	0	0	**13**	(5%)
Mental Disability / Incapacité mentale	34	1	11	0	1	**47**	(17%)
Colour / Couleur	6	3	2	0	0	**11**	(4%)
Age / Âge	15	1	3	0	1	**20**	(7%)
Ancestry / Ascendance	9	1	3	0	0	**13**	(5%)
National Origin / Origine nationale	6	3	2	0	1	**12**	(4%)
Physical Disability / Incapacité physique	44	3	13	0	0	**60**	(21%)
Sexual Harassment / Harcèlement sexuel	19	1	0	0	0	**20**	(7%)
Sexual Orientation / Orientation sexuelle	19	1	1	0	0	**21**	(7%)
Reprisal / Représailles	0	0	0	0	0	**0**	(0%)
Total	**202**	**22**	**51**	**3**	**4**	**282**[2]	
	(72%)	**(8%)**	**(18%)**	**(1%)**	**(2%)**		**(100%)**

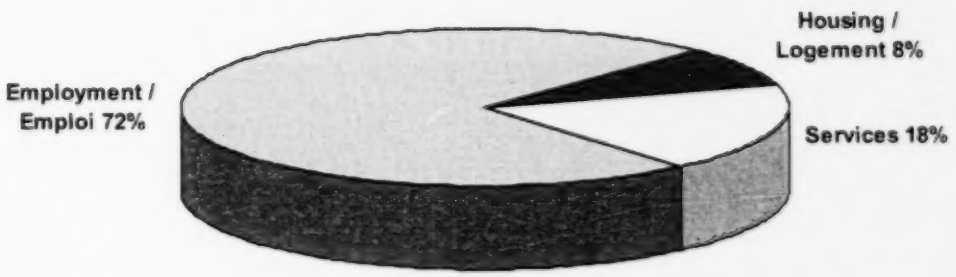
[1] Complaints received before April 1, 2003 are omitted even if they were still active in 2003-04. Accordingly, this table is not comparable to the table in last year's annual report.

[2] There were 171 complaints received. The numbers here do not total 171 because some complaints concerned more than one ground or activity.

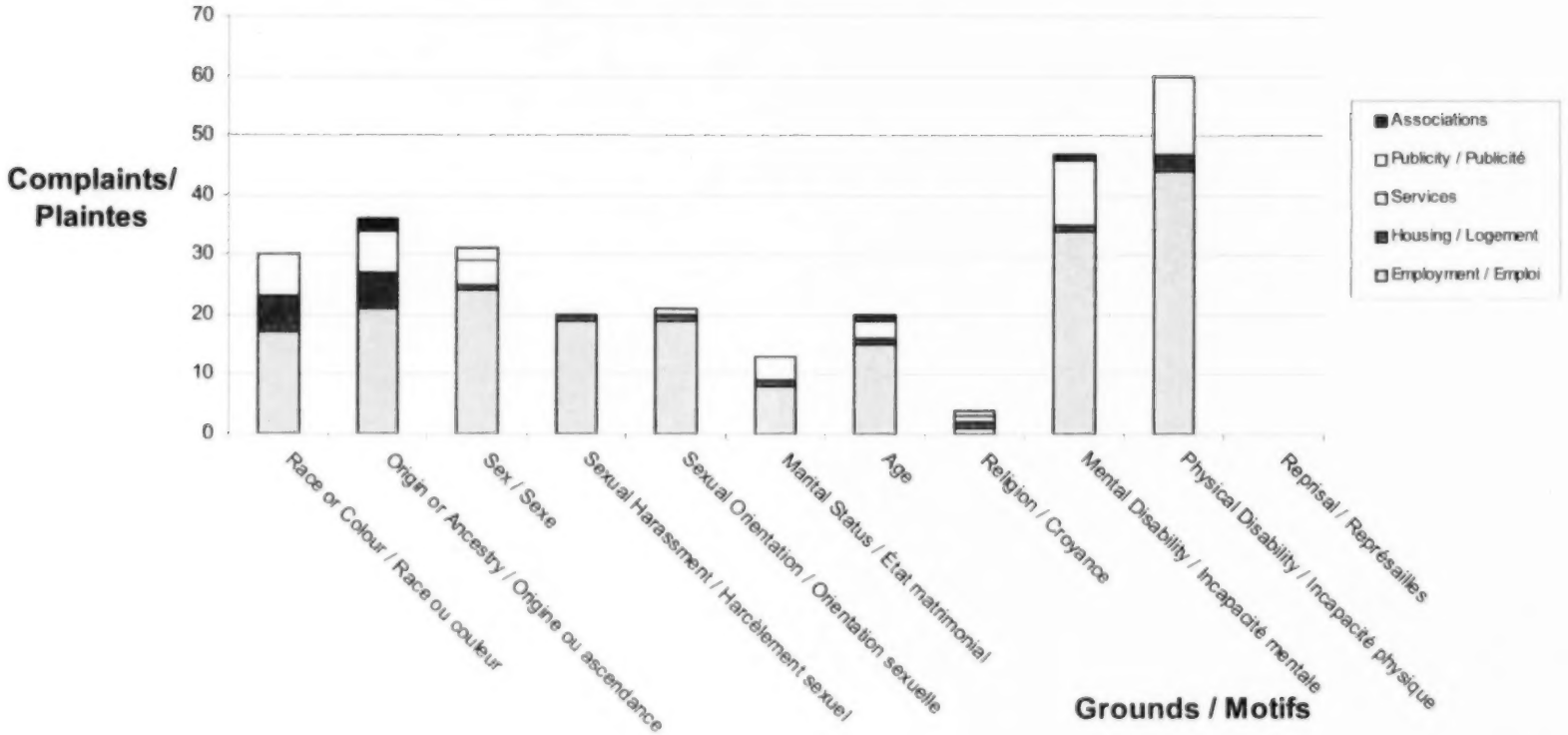
Formal complaints by location
2003-2004
Plaintes officielles par localité



Formal complaints by activity
2003-2004
Plaintes officielles par activité



Formal complaints by ground and activity
2003-2004
Plaintes officielles par motif et activité



Appendix E
Summary of Expenditures

This annual report was printed before the publication of the Public Accounts for 2003-04. Audited information was not available. For final figures, please consult the supplementary information relating to the Department of Training and Employment Development in Volume 2 of the Public Accounts.

	2002-03 Actual / Réelles	2003-04 Main Estimates / Budget principal	2003-04 Amended Budget / Budget rectifié	2003-04 Actual / Réelles	2003-04 Variance-Over / Écart-supérieur
Dispute Settlement (compliance) / Règlement des différends (traitement des plaintes))	$447,536.46	$362,677	$380,422	$474,480	$94,058
Public Education / Éducation publique	$247,489.34	$303,120	$312,565	$249,812	($62,753)
Legal Services / Services juridiques	$190,089.48	$98,822	$98,822	$99,816	$994
Office of the Commission / Le bureau de la Commission	$41,007.09	$26,881	$26,881	$44,680	$17,799
Total	**$926,122.37**	**$791,500**	**$818,690**	**$868,788**	**$50,098**

The main reason that the the Commission exceeded its budget in 2003-2004 is a result of backfilling positions.

Appendix F
Publications and videos of the New Brunswick Human Rights Commission

Note: *The following publications are available free of charge, but quantities are limited. To find out where you can order our publications, see Appendix G. Please note that a few publications not listed below are available exclusively on our website at:* www.gnb.ca/hrc-cdp/e/

Pamphlets

also available on our website

- The Human Rights Award

Fact sheets

also available by e-mail from hrc.cdp@gnb.ca

- 1-The New Brunswick Human Rights Act
- 2-The New Brunswick Human Rights Commission
- 3-Public Services
- 4-Employment Conditions and Practices
- 5-Employment Agencies
- 6-Job Advertisements
- 7-Pre-employment Process
- 8-Workplace Accessibility
- 9-Sexual Harassment
- 10-Housing

Videos and Major Publications

- Annual Report
- Position Paper on Human Rights Renewal in the Province of New Brunswick (2004, 13 pages)
- Thirty-Five Years and Looking Forward! A Discussion Paper and Survey on New Directions in Human Rights for New Brunswick (2002, 17 pages)
- Thirty-five Years and Looking Forward! A Summary of Consultations and Briefs on New Directions in Human Rights for New Brunswick (2004, 17 pages)
- Learning Together about Rights and Responsibilities, A teacher's activity guide for grades four to eight (2000, 157 pages)
- Rights and Responsibilities: the 4th and 5th R's of Education. A Common Sense Guide to Human Rights Education for Adults (1996, 104 pages)
- Foundations for Fairness video series and study guide (1995)

- Vision for Equality video series and study guide (1997)
- Human Rights Film and Video Guide (116 pages)
- Towards a World Family (Ferris Report) (1989, 270 pages)
- Equality in Action - The New Brunswick Human Rights Commission: 30 years in Review 1967-1997 (1998, 109 pages)

Posters

- New Brunswick Human Rights Day
  (reproduction of declaration by the Premier that September15 is N.B. Human Rights Day, 8" x 11.5")
- Universal Declaration of Human Rights
  (full text, on 17" x 22" poster)
- Human Rights are Everyone's Business
  (11" x 17" full-colour poster with URL & phone of NBHRC)

Guidelines adopted by the Commission

- General Criteria for the Investigation of Complaints of HIV/AIDS Discrimination (1997, 3 pages)
- Guideline on Accommodating Physical and Mental Disability at Work (2004, 28 pages)
- Guideline on B.F.O.Q.'s and B.F.Q.'s and the Duty to Accommodate (2000, 10 pages)
- Guideline on Delegation of Compliance Functions (2001, 4 pages)
- Guideline on Discrimination in the Housing Sector (2004, 19 pages)
- Guideline on Drug and Alcohol Testing in the Workplace (2003, 16 pages)
- Guideline on Mandatory Retirement (2004, 7 pages)
- Guideline on Pregnancy Discrimination (2004, 10 pages)
- Guideline on Privilege and the Human Rights Commission (1995, 3 pages)
- Guideline on Special Programmes (2004, 9 pages)
- Guideline on Time Limit Extension for Com-plaint Initiation (1996, 1 page)

Appendix G

How to contact the New Brunswick Human Rights Commission

Website: www.gnb.ca/hrc-cdp/e/

Email: hrc.cdp@gnb.ca

Head Office: Fredericton

New Brunswick Human Rights Commission
751 Brunswick Street
P.O. Box 6000
Fredericton, NB
E3B 5H1 Canada
Telephone: 1-888-471-2233 (toll-free in NB)
(506) 453-2301 (Fredericton & out-of-province)
Fax: (506) 453-2653
TTY: (506) 453-2911

Campbellton

New Brunswick Human Rights Commission
6 Arran Street (Level 0)
Campbellton, NB
E3N 1K4 Canada
Telephone: 1-888-471-2233 (toll-free in NB)
Fax: (506) 789-2267

Moncton

New Brunswick Human Rights Commission
770 Main Street
Assumption Place, 4th floor
P.O. Box 5001
Moncton, NB E1C 8R3 Canada
Telephone: 1-888-471-2233 (toll-free in NB)
Fax: (506) 869-6608

Saint John

New Brunswick Human Rights Commission
8 Castle Street
P.O. Box 5001
Saint John, NB
E2L 4Y9 Canada
Telephone: 1-888-471-2233 (toll-free in NB)
Fax: (506) 658-3075